

Rights of Way on Tribal Lands: Protecting Our Legacy



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Presentation on Section 1813
April 18, 2006 Denver, Colorado

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My name is John Muncy - I am a member of the Tribal Council of the Morongo Band of Mission Indians near Banning, California. This is a presentation by our tribe on the issues concerning rights of way on tribal lands.

In today's proceedings, we are faced with two basic questions:

FIRST:

Should the rights of more than 567 tribal governments in 28 states throughout the country ~ be suspended because El Paso Natural Gas ~ a utility company ~ has a dispute with one tribe?

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SECOND:

Should the Secretary of the Interior be empowered to seize portions of our reservations, without the consent of the people who own that land, in order to turn it over to corporations for their own profit?

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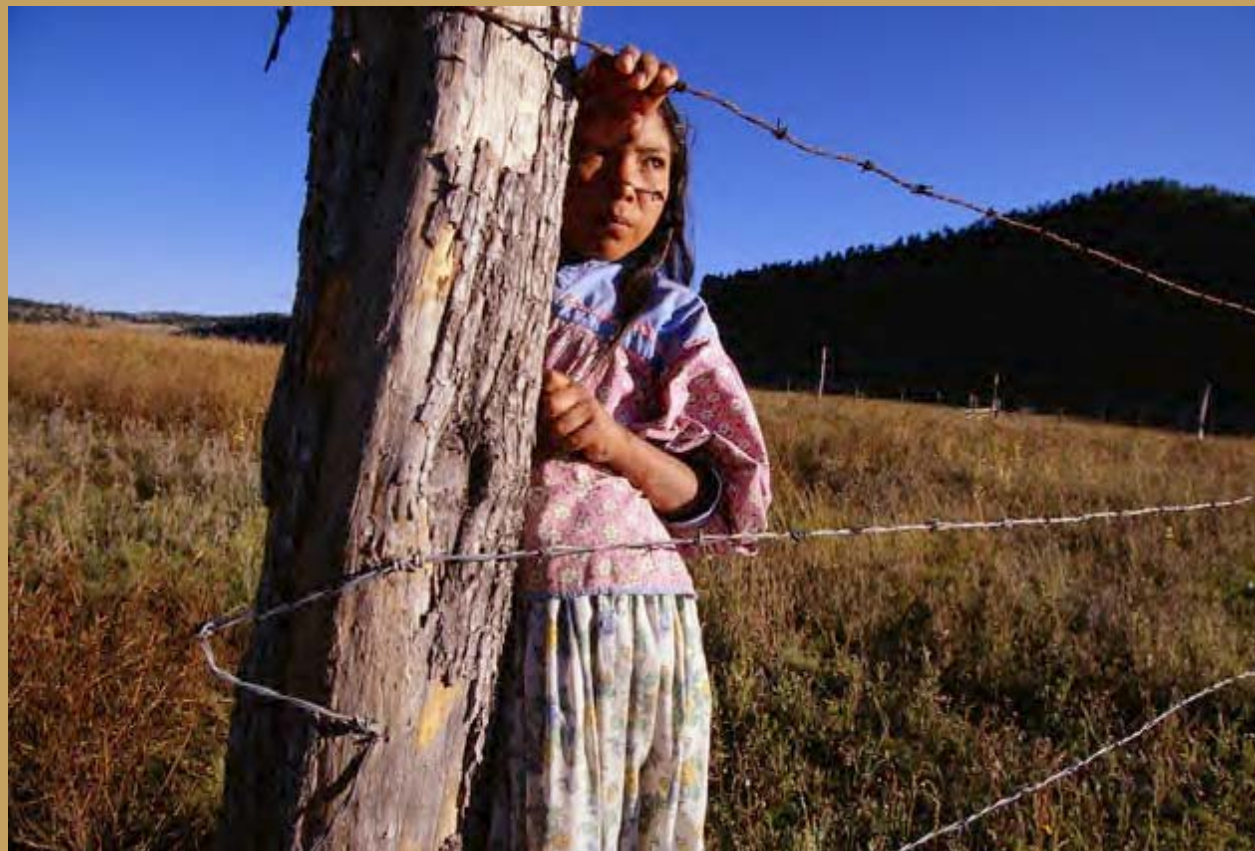
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These are the questions that
the DOE/DOI
Indian Rights-Of-Way Study
must answer for Congress.

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These are not questions of national security, ratepayers' interests, renewable resources or any other false claims.

Upholding Sec. 1813 is a matter of fundamental issues:

- Eminent domain
- Consent of the governed
- Fairness
- The value of a federal promise

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My tribe knows something about
these issues that we would like to
share with you.

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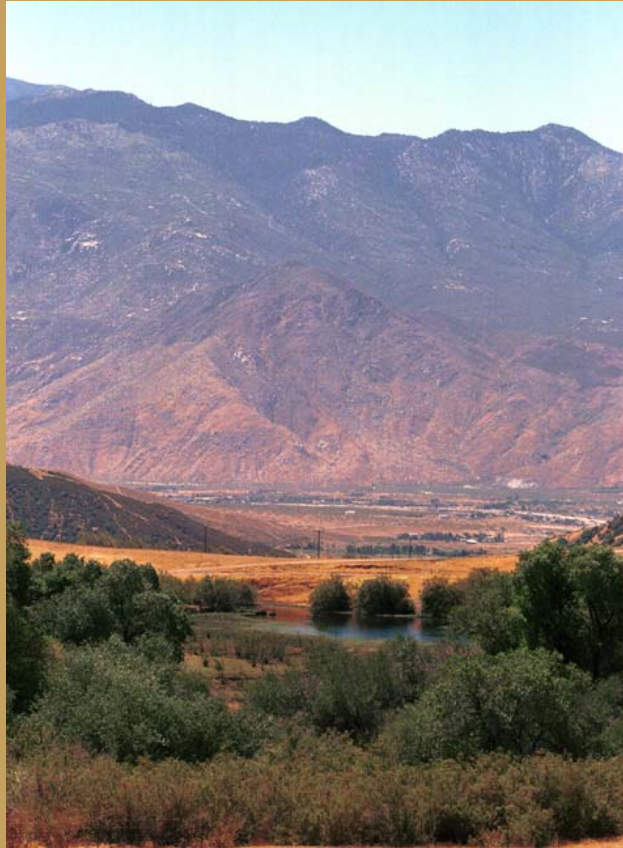


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This is our reservation at Morongo.
We have just over 1,000 members. Many
grew up here and call the reservation
home.

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We have a lot of experience with what happens when rights of way are rammed through a reservation without the consent of the people who live there.

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And we have significant experience in producing the mutual benefits that can be achieved when consent is required and utility companies and tribal governments cooperate.

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“The utmost good faith shall always be observed towards Indians; their land and property shall never be taken from them without their consent.”

United States Congress, 1789

This was the promise given at the founding of this great nation. These same principles helped the establishment of our reservation in 1876 by President Ulysses Grant.

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But by the beginning of the
Twentieth Century, a different ethic
was in place.

The business of the Bureau of Indian
Affairs was business, big business.

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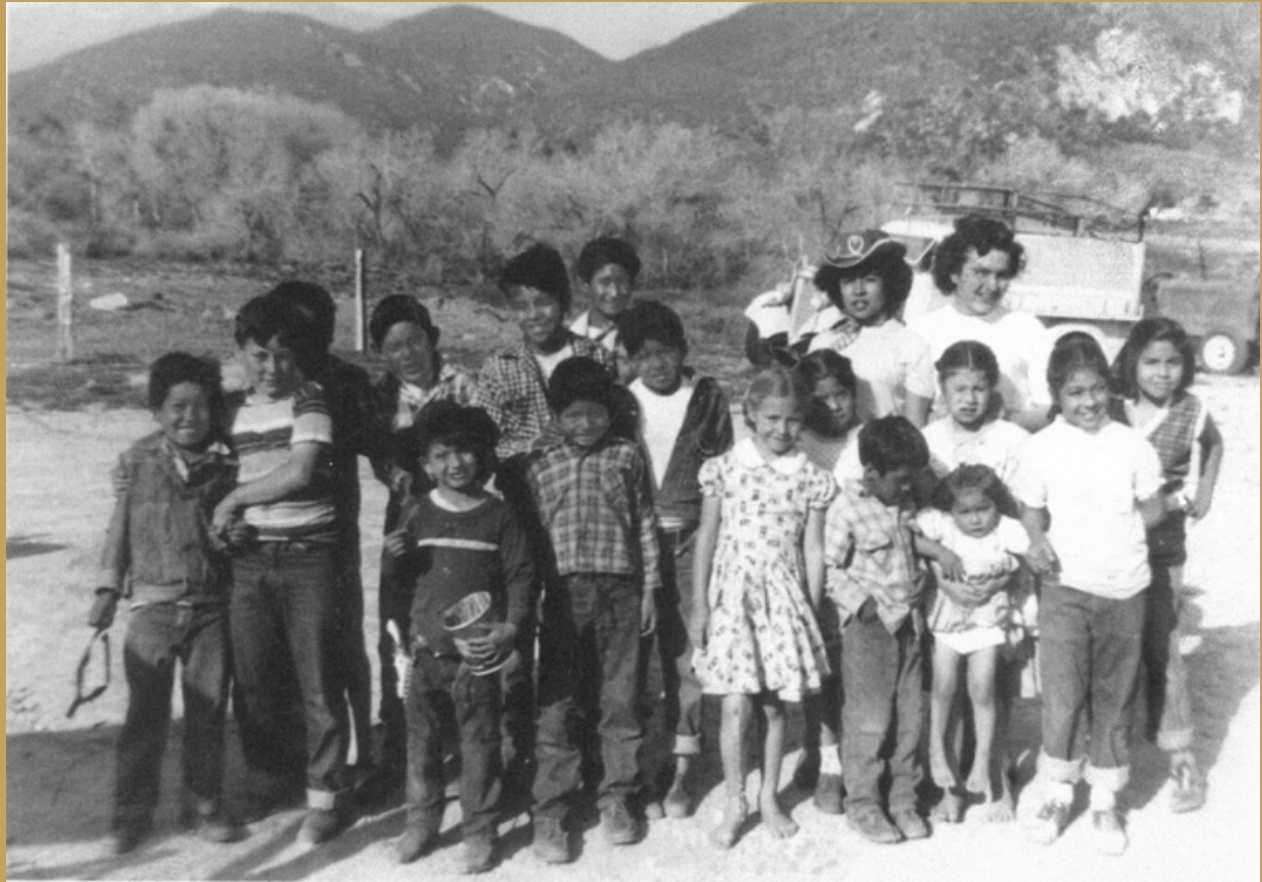


The reservations were being carved up for rights of way to benefit railroads, water and highway developers and energy companies.

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Sure, a lot of Indians would be hurt in the process ~ the government knew that. But the government promised, the survivors would be grateful in the end.

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The following are the government's words to read for yourself. This was a very real federal policy - the consent of tribal governments was not required for any right of way on tribal lands.

Taking a moment to read them may help you to understand the way we view these issues, what our experience has been, and how the lives of my parents and grandparents and great-grand parents were affected by these attitudes.

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IN THEIR OWN WORDS:

"Perhaps in the course of merging this hardly used race into our body politic, many individuals, unable to keep up the pace, may fall by the wayside and be trodden underfoot.

Deeply as we deplore this possibility, we must not let it blind us to our duty to the race as a whole.

Francis E. Leupp, Report of the Commissioner of Indian Affairs, 1905

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IN THEIR OWN WORDS:

"It is one of the cruel incidents of all civilization in large masses that some - perchance a multitude - of its subjects will be lost in the process. But the unseen hand which has helped the white man through his evolutionary stages to the present will, let us trust, be held out to the red pilgrim in his stumbling progress over the same rough path."

Francis E. Leupp, Report of the Commissioner of Indian Affairs, 1905

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“This hardly used race...may fall by the
wayside and be trodden underfoot...”

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“..its subjects will be lost in the
process....”

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It was in that spirit that the first right of way for power lines was driven through our reservation in 1914. A 90,000-kilovolt line, erected without permission, consultation or even official authorization.

Years later, compensation for this intrusion was set ~ at five dollars a year ~ later increased to \$5.29.

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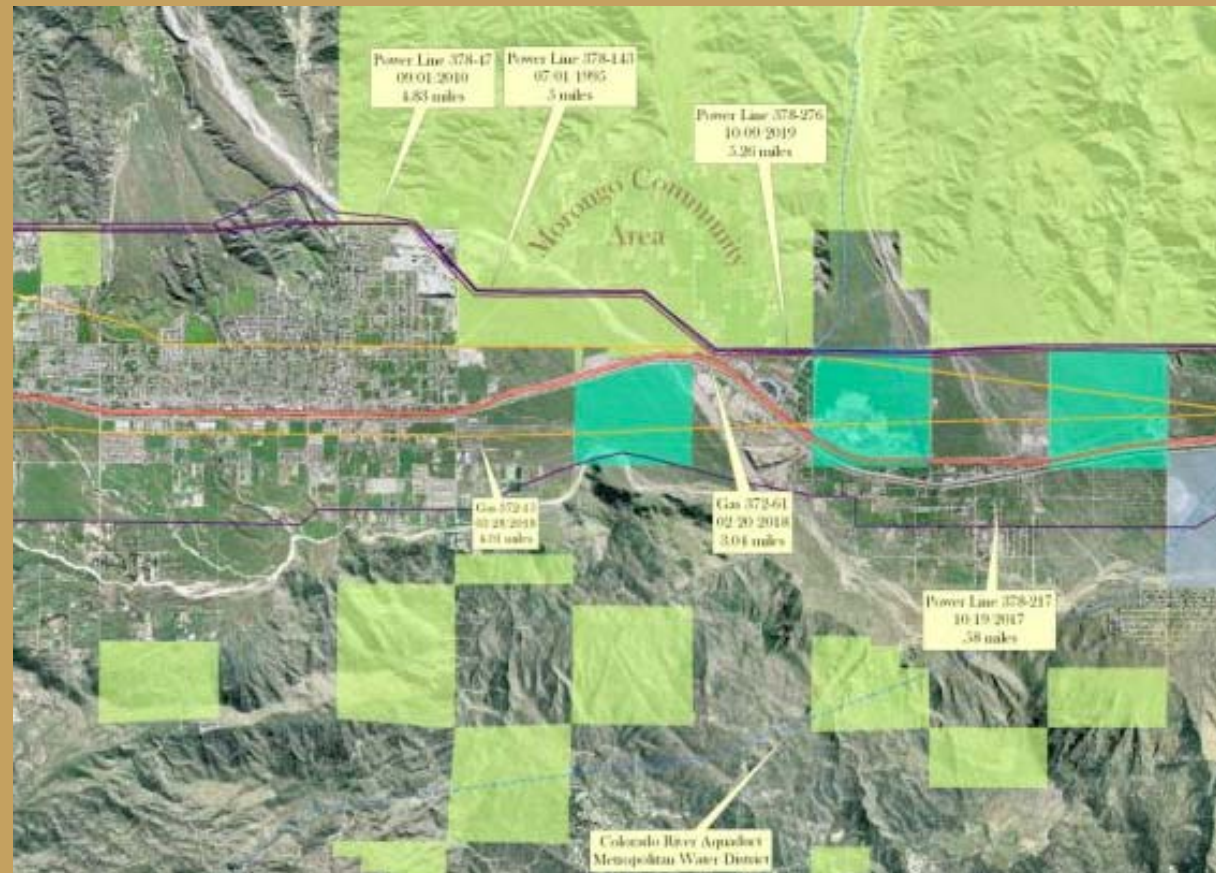


It amounted to one and a half cents a day.

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That was just the beginning. The rights of way that were subsequently imposed on the Morongo reservation included a maze of electric, gas, water, and fiber optic lines as well as railroads and highways.

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As with the first of those power lines, the rule for much of this period was to build first and get approval later. By the 1940s, the Bureau of Indian Affairs had evolved what its commissioner called a policy of “ruthless benevolence.”

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The “ruthless benevolence” policy - A tribal chairman weeps as a U.S. Interior official signs a contract that will flood 155,000 acres of Indian land for a new dam.

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When the first 230-kilovolt transmission line was driven across our reservation in 1945, we were not consulted but we were compensated.

This time with payments of \$31.80 a year for a right of way that was 300 feet wide and nearly six miles long.

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About eight cents a day.

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These are our homes amid the
transmission lines.

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UTILITY'S COST: \$31.80 a
year.
UTILITY'S PROFIT: Billions.

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The rules began to change in 1948, when Congress for the first time required tribal consent for rights of way and established fair market value as the minimum compensation for all tribal rights of way.

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This is the law the proponents of Sec.
1813 want to turn back.

Back to what they think of as the good
old days, when tribal consent was not
required, and the government fixed
whatever the level of compensation
would be.

Questions for the Future

Why undercut a basic protection that has been in place for nearly sixty years?

Has the existing process of mutual negotiation and consent proven so cumbersome as proponents claim that the rights of tribal property owners need be suspended?

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Morongo has made provisions of Section 1813
work for the benefit of all.

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In contrast to the damage that was done to our homes before consent was required, we have been making the modern system work for all concerned.

We have good relations with utilities, private companies and public agencies whose lines cross our lands.

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For example, we have been working with Southern California Edison to ensure that there will be no disruption in their delivery of services even though their rights of way are expiring. The right of way for one 230-kilovolt transmission line expired in 1995; the easement for another 115-kilovolt line expired in 2005. But we have agreed to extend the use of both lines to 2010, when another easement will also be up for renewal. Negotiations are set to get under way on these rights in 2008.

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We are working to ensure there is no disruption in the delivery of services.

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We successfully negotiated an agreement with Edison to install a fiber optic telecommunication line in 1997. And we are already negotiating with Edison on their proposal to modify its existing single-circuit 230-kilovolt lines and make room for the construction of two 500-kilovolt lines.

Good Faith Negotiations

- 1995 – Devers-San Bernardino No. 1. ROW expires. Extended to 2010.
- 1997 – Devers-Vista No. 1. Fiber optic line installed.
- 2005 – Banning-Garnet-Maraschino. ROW expires. Extended to 2010.
- 2005 – SCE proposed overhaul of existing 230 kilovolt system and addition of future 500 kilovolt line. Negotiations under way.

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A Process That Works

Undermining the tribal right of consent can only disrupt and delay these negotiations and the positive relationships we have built with entities like Edison.

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A Process That Works

We urge the Department of the Interior and
Department of Energy:

- Do not turn back the clock and betray tribal sovereignty by amending 1813.
- Morongo's history demonstrates the progress that can be achieved when tribal consent is required – as well as the consequences of a system that denies this fundamental right.

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Preserving Section 1813 will:

- Preserve a fair and well-established process of mutual negotiation and consent
- Protect the right of tribes to defend their interests against commercial encroachment
- Uphold the federal obligation to respect tribal sovereignty

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Protecting Section 1813 is a good and lasting way to protect our lands for our children and grandchildren and for tribes and utilities work towards the benefit of all.